BASIC COURT OF GJILAN/GNJILANE

P.Kr. 135/15

Date: 11th November 2015

The judgments published may not be final and may be subject to an appeal according to the applicable law.

IN THE NAME OF THE PEOPLE

The Basic Court of GJILAN/GNJILANE through the trial panel composed of EULEX Presiding Judge Vitor Hugo Pardal, EULEX Judge Radostin Petrov and local Kosovo Judge Afrim Shala as panel members and Court Recorder Muhamet Musliu, in the criminal case against:

L J, nickname N, son of xxx and xxxx, born on the XXX in xxx, Serbia, male, residing in XXX, Kosovo, Kosovo Albanian and with both Serbian and Kosovar citizenships, this late with ID no. xxx and Passport no. xxx, being remanded since the 10 January 2014;

charged with the criminal offences listed below as per the indictment:

(1) **Attempted aggravated murder** – two counts, in violation of Article 147 paragraphs 4, 5 and 10 of the Criminal Code of Kosovo (CCK) of 2003, in conjunction with Article 20 of the CCK, punishable by imprisonment of no more than three-quarters of ten years or of long-term imprisonment – counts 1 and 6;

(2) **Attacking official persons performing official duties** – two counts, in violation of Article 317 paragraphs 1, 2 and 3 of the CCK, punishable by imprisonment of one to ten years – counts 4 and 8;

(3) **Grievous bodily harm** – one count, in violation of Article 154 paragraphs 1 and 2 of the CCK, punishable by imprisonment of one to ten years – count 2;

(4) **Unauthorized ownership, control, possession or use of weapons** – two counts, in violation of Article 328 paragraphs 1, 2, 3 of the CCK – counts 5 and 9;

After having hold 12 public trial sessions respectively on the 6 February 2015, 13 February 2015, 20 April 2015, 21 April 2015, 21 May 2015, 22 May 2015, 24 Jul 2015, 27 Jul 2015, 24 August 2015, 29 September 2015, 16 October 2015 and 9 November 2015, and hereby announced on the 11 November 2015 in the presence of the defendant and of his Defense Counsel Mr. R G, as well as of the SPRK Prosecutor Mr. Andrew Carney, after the trial panel's deliberation and voting held on 9th November 2015, pursuant to articles 362.1, 364 and 365 of the KPCP issues the following

JUDGMENT

On Count 1 – Attempt to commit aggravated murder in co-perpetration, contrary to article 147, paragraphs 4, 5 and 10 in conjunction with articles 20 and 23, all of the CCK dated 2003, pursuant to articles 362.1 and 364.1.3 of the KCPC, the accused **L J** is

ACQUITTED

of the aforementioned charge, because in concrete case it has not been proven that the accused has committed the act with which he has been charged, as follows:

"On the 15th September 2004, at approximately 01:50, in the vicinity of xxx, Skopje, in the Republic of Macedonia, L J, in co-perpetration with another, fired a number of shots using a pistol type "T" of caliber 7.62 x 25mm, serial Number P…at uniformed police officers Z A , V I and E D, as they were driving along that street on patrol in a marked L police vehicle, registered number XXX-XX. All of the officers suffered serious injuries by way of gunshot wounds as a result of the attack on their vehicle whilst they were sat in it. In firing on the three officers, L J attempted to deprive the officers of their lives in the following circumstances: he intentionally endangered the lives of one or more persons, while acting ruthlessly and violently and at a time when the three officers were executing their duty of protecting legal order, uncovering

criminal offenses, apprehending a perpetrator of a criminal offense and keeping public order and peace".

On Count 2 – Grievous bodily harm in co-perpetration, contrary to article 154, paragraph 1 and 2 in conjunction with article 23, both of the CCK dated 2003, pursuant to articles 362.1 and 364.1.3 of the KCPC, the defendant **L J** is

ACQUITTED

of the above referred charge, because in concrete case it has not been proven that the accused has committed the act with which he has been charged, as follows:

"On the 15th September 2004, at approximately 01:50, in the vicinity of xxxx, Skopje, in the Republic of Macedonia, L J, in co-perpetration with another, fired a number of shots using a pistol type "T" of caliber 7.62 x 25mm, serial Number P. at uniformed police officers Z A, V I and E D, as they were driving along that street on patrol in a marked L police vehicle, registered number xxx. As a result of the attack on them, the defendant inflicted bodily harm upon them to the extent that it may have resulted in endangering their lives. Further, V I was injured to the extent that the offense permanently and seriously impaired his health and that it permanently destroyed a vital organ or a vital part of his body in that his spleen had to be removed as well as a length of his small intestine whilst a bullet remained lodged near to his liver. E D was injured to the extent that the offence permanently and seriously impaired her health in that it permanently destroyed a vital part of her body in that a shot to her finger caused her to lose the proper functioning of her left hand".

On Count 4 – Attacking official persons performing official duties in co-perpetration, contrary to article 317, paragraphs 1 and 3 in conjunction with article 23, both of the CCK dated 2003, pursuant to articles 362.1 and 364.1.3 of the KCPC, the defendant **L J** is

ACQUITTED

of the aforementioned charge, because in concrete case it has not been proven that the accused has committed the act with which he has been charged, as follows:

"On the 15th September 2004, at approximately 01:50, in the vicinity of xxxx, Skopje, in the Republic of Macedonia, L J, in co-perpetration with another, fired a number of shots using a pistol type "T" of caliber 7.62 x 25mm, serial Number P… at uniformed police officers Z A, V I and E D, as they were driving along that street on patrol in a

marked Lada police vehicle, registered number xxx. By doing so, he attacked official persons who were performing official duties related to public security and maintaining public order. All the official persons suffered serious bodily injury by the way of gunshot wounds as a result of the attack on their vehicle".

On Count 5 – Unauthorized ownership, control, possession or use of weapons in co-perpetration, contrary to article 328, paragraphs 1 and 2 in conjunction with article 23, both of the CCK dated 2003, pursuant to articles 362.1 and 364.1.3 of the KCPC, the defendant **L J** is

ACQUITTED

of the aforementioned charge, because in concrete case it has not been proven that this accused has committed the act with which he has been charged, as follows:

"On the 15th September 2004, at approximately 01:50, in the vicinity of xxx, Skopje, in the Republic of Macedonia, L J, in co-perpetration with another, fired a number of shots using a pistol type "T" of caliber 7.62 x 25mm, serial Number P… at uniformed police officers Z A, V I and E D, as they were driving along that street on patrol in a marked L police vehicle, registered number xxx. At the time that he used his weapon, he did so without there being in force a valid weapon authorization card for it".

On Count 6 - Attempt to commit aggravated murder, contrary to article 147, paragraphs 10 and 11 in conjunction with articles 15.3 and 20, all of the CCK dated 2003, pursuant to articles 362.1 and 365.1 of the KCPC, the accused **L J**, is

GUILTY

of the aforementioned charge, because in concrete case it has been proven beyond any reasonable doubt that the accused has committed the act with which he has been charged, as follows:

"On the 24th December 2004, at approximately 20:30 at the premises known as apartment xxx, Tetovo, Republic of Macedonia, a number of officers from a special unit police, whilst acting in the course of their official duty, entered the premises with the lawful purpose of arresting L J, who was subject to a warrant of arrest. As they entered the unlocked apartment by the front door from the landing and having shouted warnings that they were police officers and that the occupants should stop and put up their hands, L J, without any lawful justification or legal defence, fired at least 6 shots in the direction of at least 2 police officers, using a pistol type "T" caliber 7.62 x 25mm, serial number P…, from the set of weapons he and Xh Sh have brought to the premises, which also included an assault rifle C Z M92, caliber 7.62 x

39m, serial number 7685, a rocket propelled grenade launcher MGL caliber 40mm serial number unidentified as removed and an unidentified assault rifle caliber 7.62 x 39mm. Also present in the apartment with L J were V A, F S, L D and Xh Sh. One of the officers, witness "E" was shot and suffered serious injury from fire shot from unidentified source. In firing on the direction of at least two police officers, L J attempted to deprive them of their lives, so he was aware that death could occur as a prohibited consequence of his action and still he acceded to its occurrence. He acted at a time when the police officers were executing their duty of protecting legal order, uncovering criminal offenses, apprehending perpetrator of a criminal offense, and keeping public order and peace".

On Count 8 - Attacking official persons performing official duties in co-perpetration, contrary to article 317, paragraphs 1 and 3 in conjunction with article 23, both of the CCK dated 2003, pursuant to articles 362.1 and 364.1.1 of the KCPC, the defendant **L J** is

ACQUITTED

of the aforementioned charge, because in concrete case the act with which the accused is charged does not constitute an AUTONOMOUS criminal offense, as it was considered as CONSUMED by the criminal offense charged in Count 6, as follows:

"On the 24th December 2004, at approximately 20:30 at the premises known as apartment xxx, Tetovo, Republic of Macedonia, a number of officers from a special unit police, whilst acting in the course of their official duty, entered the premises with the lawful purpose of arresting L J, who was subject to a warrant of arrest. As they entered the unlocked apartment by the front door from the landing and having shouted warnings that they were police officers and that the occupants should stop and put up their hands, L J, without any lawful justification or legal defence, fired at least 6 shots into the direction of at least 2 police officers, using a pistol type "T" caliber 7.62 x 25mm, serial number P…, from the set of weapons he and Xh Sh have brought to the premises, which also included an assault rifle C Z M92, caliber 7.62 x 39m, serial number 7…, a rocket propelled grenade launcher MGL caliber 40mm serial number unidentified as removed and an unidentified assault rifle caliber 7.62 x 39mm. L J attacked official persons who were performing official duties related to public security and the maintaining of public order. One of the official persons, Witness "E" was shot and suffered serious bodily injury by way of gunshot wounds from unidentified source".

On Count 9 – Unauthorized ownership, control, possession or use of weapons in co-perpetration, contrary to article 328, paragraphs 1, 2 and 3 in conjunction with article 23, both of the CCK dated 2003, pursuant to articles 362.1, 363.1.3 and 364.1 of the KCPC, the defendant **L J** is

ACQUITTED

of the aforementioned charge, because regarding the Charge under article 328.1 CCK, in the concrete case the act with which the accused is charged does not constitute an AUTONOMOUS criminal offense, as partially it was considered as CONSUMED by the criminal offense charged in Count 6 (article 364.1 CCK), and regarding the charge under article 328.3 CCK because in concrete case it has not been proven that this accused has committed the act with a "large amount of weapons" as he was charged with.

The charge under article 328.2 CCK is

REJECTED

as it is fully covered by amnesty.

The facts concerning the aforementioned charge are the following:

"On the 24th December 2004, at approximately 20:30 at the premises known as apartment xxx, Tetovo, Republic of Macedonia, L J used at least a pistol type "T" caliber 7.62 x 25mm, serial number P…, from the set of weapons he and Xh Sh have brought to the premises, which also included an assault rifle C Z M92, caliber 7.62 x 39m, serial number…, a rocket propelled grenade launcher MGL caliber 40mm serial number unidentified as removed and an unidentified assault rifle caliber 7.62 x 39mm. At the time that he used the pistol "T" and possessed the remaining weapons in co-perpetration, he did so without there being in force a valid weapon authorization card for them".

SENTENCING

Pursuant to article 365.1 of the KCPC, and articles 20, 34 to 36, 38, 64 and 65.2 of the CCK dated 2003, the defendant **L J** is hereby sentenced for **Count 6 – Attempt to commit aggravated murder,** contrary to article 147, paragraphs 10 and 11, pursuant to articles 362.1 and 365 of the KCPC, to the punishment of **6 (six) years imprisonment**;

From the punishment herein it will be discounted the time already spent in detention on remand, concretely from 10 January 2014.

COSTS

L J has been found guilty of one criminal offense, and therefore is obligated to reimburse the costs of the criminal proceedings pursuant to article 451.1 and 2 and 453.1 of the KCPC, as listed by article 450.2 of the same Code except the cost of interpretation and translation throughout the criminal proceedings. Having into consideration all the aforementioned the Court hereby establishes a scheduled amount of 500 (five hundred) Euro (article 450.2.6 KCPC) and a separate ruling will be further issue regarding the total amount of court expenses, considering then the total amount of witnesses, number of sessions held and ILA requests for which he is also liable (article 451.2 KCPC).

COMPENSATION CLAIMS

NO compensations claims have been submitted in this case and there are no documentary elements in the case file to assure that the injured parties were not already compensated in a similar case already tried in M. Unable to check whether the global amount attributable to the damage suffered was already compensated or not, and in which part, the Court directs the injured parties to seek compensation for damage through civil instance; otherwise this trial, where the defendant is detained on remand for almost two years would be significantly delayed in its verdict.

REASONING

Procedural background

On the 21st November 2014, the SPRK Prosecutor Mr. Andrew Carney filed an indictment against the accused L J. In order to support the aforementioned charges, the SPRK Prosecutor brought up a list of technical/documentary evidence (crime scene and recovered items including blood stains and subsequent ballistic and DNA reports as well as nitrate testing and autopsy of L D, on pages 11, 13, 14 to 16, listed as a whole on page 28 to 40 of the indictment) as well as proposing 21 witnesses, 17 of those under the regime of

anonymity and the respective statement to be provided through video-link from Macedonia (page 23 of the indictment).

Although the defendant has been initially charged with 9 counts, after holding the first hearing on the 3rd December 2014, the Presiding Judge dismissed two of them (counts 3 and 7) by a ruling dated 5th January 2015. This ruling was not challenged by any appeal.

The main trial has been hold in 12 public sessions respectively on the 6 February 2015, 13 February 2015, 20 April 2015, 21 April 2015, 21 May 2015, 22 May 2015, 24 Jul 2015, 27 Jul 2015, 24 August 2015, 29 September 2015, 16 October 2015 and 9 November 2015.

During the Course of the aforementioned trial sessions, 17 anonymous witnesses (4 of the initially suggested were later on withdrawn by the Prosecution) have been examined through video-link from M and 2 others suggested by the defense (both later withdrawn but rather examined by decision *ex officio* of the panel) were examined in court room. Also all technical/documentary evidence listed on the indictment was examined before the panel in accordance to what – and by the way that – the parties deemed as necessary.

The trial panel's deliberation and voting took place on the 9th November 2015 and the judgment was orally announced during the last public session, on the 11 November 2015.

Several preliminary issues of procedural nature were raised by the defense at the first hearing and those afterwards which were considered and decided upon in the ruling dated 5 January 2015, rendered by the Presiding Judge. The objected admissibility of 2 statements obtained from suspects in a previous criminal procedure was ruled by the aforementioned ruling of 5 January 2015 but was raised up again during the course of the main trial when those suspects were examined as witnesses during the course of the main trial. Although this objection has been ruled again in the same line, it will deserve some legal developments in this judgment, uniquely for clarification purposes.

The defendant produced a statement whilst being examined at the trial, in line with article 346 of the KCPC.

The SPRK Prosecutor gave his closing speech and the defendant provided the closing statement by himself and by his defense counsel.

The defendant was present during the oral announcement of the final judgment.

Jurisdiction of this Court

The judges composing this panel are competent to adjudicate this case, having the court the material and territorial jurisdiction, as per articles 25 and 29 KCPC; Following a decision of the President of EULEX Judges issued on the 25 Nov 2014, to assign the undersigning EULEX Judges for adjudicating this case, and the local judge was appointed following the applicable roaster in force at the Gjilan Basic Court. Twelve main trial sessions have been held and no objections have been raised by the parties. Thus, the panel is the competent.

Previous issue: "*the use in the main trial at stake of previous statements provided by 2 suspects in a case involving the very same facts already adjudicated in M*"

As per article 123, paragraph 5 KCPC, "*Statements provided by a defendant in any context, if given voluntarily and without coercion, are admissible during the main trial against the defendant, but not co-defendants. Such statements may not serve as the sole or as a decisive inculpatory evidence for a conviction*".

In the case at stake, V A (on the 25 December 2004) and F S (on the 25 and 27 December 2004) were examined as defendants in M is separate proceedings. However only the examination of F S dated 25 December 2004 was hold on the presence of his defence counsel.

Article 123 KCPC articulated in conjunction with article 151, paragraph 1, defines and foresees the use in trial pretrial interviews and pretrial testimonies as extended to the defendants as well.

Both pretrial interviews and pretrial testimonies may be used in main trial, although only under specific conditions and to specified purposes (article 123, paragraphs 2 and 3 KCPC). However, the admissibility of use of evidence previously gathered for clarification purposes on the one hand; and the admissibility of its use as inculpatory evidence, on the other, are completely different issues.

Article 125, paragraph 5 KCPC is clear that previous statements provided by a defendant cannot be used AS EVIDENCE AGAINST a co-defendant. It is an issue of its use FOR INCRIMINATION, not its use for mere clarification of further statements provided directly before the trial panel while examined as witnesses. Statements provided by these two witnesses, while previously collected when they were under the status of defendants in M in 2004 could not, would not and were not considered as evidence itself against the defendant in this case, L J. By the contrary – as it will be explained later on – the only evidence considered by the trial panel in the case at stake were their statements directly produced before the mail trial as witnesses, in relation to which the trial panel also considered the relevant fact that they were previously labelled as defendants in an initial stage, but later never accused or tried for those facts. Furthermore, to assess whether those previous statements as defendants are favourable or against the present defendant, the panel needs to use them first in trial. As a matter of fact, these previous statements have a very limited procedural use in accordance to article 123, paragraphs 2 and 3 KCPC and for clarification purposes only; moreover, at the end of the day, theoretically they can be revealed as favourable to the present defendant and not against him, having in mind that article 123, paragraph 5 KCPC only forbids its use AGAINST the defendant for strict incriminatory purposes.

Having in mind all the hereby explained, the panel did not linearly exclude the use of previous statements of witnesses during the course of the main trial

and rather admitted its use only for clarification of their present statements provided before the trial panel. If they reveal themselves to be against the present defendant, they would never be used as incriminating evidence, thus fully respecting article 123, paragraph 5 KCPC. They were not, though.

Administered Evidence

The following set of evidence was considered as relevant to the final deliberation and subsequent judgment.

Written exhibits: The following list of documentary evidence was considered as analyzed at the main trial, as provided by article 344.1 KCPC:

- Z A's medical reports – Binder I, pg. 10-15;
- V I's medical reports - Binder I, pg. 28-42;
- E D's medical reports - Binder I, pg. 52-69;
- Official Note - Record for traces and found objects at the spot, Contents and Photo Album of the crime scene - Binder I, pg. 70-106;
- Official note - Binder I, pg. 107-109;
- Report on examination of firearms – Binder I, pg. 119-121;
- Expertise 793/2004 report – Binder I, pg. 122-146;
- Medical notes regarding witness E, Binder II, pg. 55-66;
- Street, building and apartment plans – Binder III, pg. 1-9;
- Interpol search Document – Binder III, pg. 1-9;
- Record of description of the crime scene – Binder III, pg. 10-21;
- Record of found traces and items from the crime scene search and photo album of the crime scene – Binder III, pg. 22-209;
- Report on examination of firearms – Binder III, pg. 210-215;
- Analyses of firearms and firearms discharging evidence – Binder III, pg. 216-219;
- Expertise 1178/04 of firearms, traces of firearms and traces of biological origin – Binder III, pg. 220-246;
- Report on analyses of firearms traces – Binder III, pg. 247-252;
- Forensics report on analysis of firearms traces - Binder III, pg. 253-261;

- Official Note 1126/2014 about attending the crime scene - Binder III, pg. 262-265;
- Report on analysis of powder foils and determining the blood type - Binder III, pg. 266-268;
- Verification on temporary seized items - Binder III, pg. 269-274;
- Expertise 1207/2004 of traces of firearms and blood traces - Binder III, pg. 276-283;
- Autopsy report of L D - Binder III, pg. 284-304;
- Photo album - Binder IV, pg. 1-11;
- Handover and summary of L J's medical file - Binder IV, pg. 12-15;
- Content of L J's medical file - Binder IV, pg. 16-101;
- Hospital discharge sheet with epicrisis - Binder IV, pg. 102-109;
- Photo Album - Binder IV, pg. 167-169;
- Verdict from Tetovo Court – Binder V, pg. 1-9;
- Report concerning the taking of DNA sample of L J – Binder V, pg. 128-137;
- Decision for forensic examination: DNA identification and Molecular and Genetic Analysis – Binder V, pg. 144-159;
- Report on letter of entrustment about DNA – Binder V, pg. 163-166;
- Response to MLA From M – Binder V, pg. 167-198;
- Response to MLA From M – Binder VI, pg. 78-90;
- Order for witness protection – Binder VI, pg. 176-187;
- Response to MLA From M – Binder VI, pg. 217-218;
- Criminal record of L J in Kosovo – Binder X, pg. 74

Witnesses: statements produced at the main trial by witnesses:

- Z A, V I, E D by video-link from S, M;
- Witnesses A, B, M, C, E, F, G, R, I, J, L, P and Q, these under the status of anonymous witnesses by video-link from S, M; and
- A K, V A and F S.

Statement of the defendant: as produced before the Court at the main trial.

All Records of previously gathered statements of the witnesses as well as the note of corroboration regarding the defendant as listed in the indictment have been used strictly under the limited extend as permitted by article 123, paragraphs 2, 3 and 5 KCPC, not as evidence themselves, as *in verbatim* described in the minutes.
All remaining documents listed in the indictment were accurately assessed by the trial panel and considered as not relevant as evidence to the present judgment.

Statement of Grounds

Regarding the factual grounds and respective analysis, findings and reasoning, the present case is herein divided - for strict analytic purposes - into 2 separate chapters: the first one regarding the S situation, occurred on the 15th September 2004, to which are related Counts 1, 2, 4 and 5; and the T situation, occurred on the 24th December 2004, to which are related Counts 6, 8 and 9 of the indictment. Therefore,

A) The S situation – 15th September 2004: Counts 1, 2, 3 and 5 of the indictment

Factual Grounds:

a. The following relevant facts have been considered as PROVED:

1. *On the 15th September 2004, at approximately 01:50, in the vicinity of XXX, Skopje, in the Republic of Macedonia, an undetermined number of individuals whose identity could not be ascertained, acting in co-perpetration, fired a number of shots using a pistol type "T" of caliber 7.62 x 25mm, serial Number P… at uniformed police officers Z A, V and E D, as they were driving along that street on patrol in a marked L police vehicle, registered number 2..-2..*
2. *All of the officers suffered serious injuries by way of gunshot wounds as a result of the attack on their vehicle whilst they were sat in it. In firing on the three officers, the aforementioned individuals attempted to*

deprive the officers of their intentionally endangering lives of one or more persons, at a time when the three officers were executing their duty of protecting legal order and keeping public order and peace.

3. *V I was injured to the extent that the offense permanently and seriously impaired his health and that it permanently destroyed a vital organ or a vital part of his body in that his spleen had to be removed as well as a length of his small intestine whilst a bullet remained lodged near to his liver.*
4. *E D was injured to the extent that the offence permanently and seriously impaired her health in that it permanently destroyed a vital part of her body in that a shot to her finger caused her to lose the proper functioning of her left hand.*
5. *On the 24th December 2004 a pistol type "T" of caliber 7.62 x 25mm, serial Number P… was in possession of, and shot by, L J inside the XXX, T, Republic of M, from the set of weapons he and Xh Sh have brought to the premises the previous day.*

b. *The following relevant facts have been considered as NOT PROVED:*

6. *That L J has been any of the individuals who, acting in co-perpetration, on the 15th September 2004, at approximately 01:50, in the vicinity of XXX, S O, S, in the Republic of M, fired a number of shots using a pistol type "T" of caliber 7.62 x 25mm, serial Number P… at uniformed police officers Z A, V I and E D, as they were driving along that street on patrol in a marked Lada police vehicle, registered number 260-26.*
7. *That L J had previously - or that he had not - received the T Pistol from Xh Sh, as previously provided by A K in K, M.*

Reasoning and findings:

Regarding the facts described as above, the absolutely consistent statements provided by the police officers – victims - Z A, V I and E D, while describing the incident in detail, - although none of them having recognized any of the perpetrators - have been considered sufficient to assert them has fully proved. Regarding the specificities of the wounds suffered by those police

officers, the extensive and non-disputed medical reports of each one of the victims permitted to conclude for its absolute trueness, moreover confirmed consistently by each of the statements provided by the victims as witnesses in this trial. The 2 cases/capsules found on the crime scene as listed and analyzed through expertise in 2004, while compared with those found on the crime scene of the 24th December 2004 permitted to definitely identify them and connect them to the pistol "T" that was used by the defendant on the late date beyond any reasonable doubt as per the Criminal Investigation Department No. 10.3.6 – 1753/1 dated 13.01.2005, in Binder III, pg. 247-252.

However, there was no other evidence to associate the pistol "T" as used on the 15th September 2004 to the defendant L J, except the fact that the defendant was in its possession and used the same weapon, in a similar "*modus operandi*", 3 months and 9 days later in T. No DNA/blood evidence could be found in order to possibly connect the defendant to the crime scene of 15th September 2004 and the mere disparity of versions regarding the obtainment of the weapon in stake – being given by A K to Xh Sh and further provided to the defendant (L J), or being stolen previously by Xh Sh to A K's group (A K), makes no significant difference, besides because none of those can even be somehow confirmed by Xh Sh, reportedly dead at the present date.

The fact is that, without any recognition related to 15th September 2004 and no other technical evidence as gathered, the existent grounded suspicions that L J used the very same weapon more than 3 months earlier does not match the requirements of *beyond any reasonable doubt* as legally demanded for a further conviction for having used it on the 15th September 2004 as well. Indeed, the panel asserted that the second situation was not separated from the first one by only several hours or days, but by more than 3 months which could not lead to a different conclusion than the lack of sufficient evidence to definitely link the accused to the S situation.

B) The Tetovo situation – 24th September 2004: Counts 6, 8 and 9 of the indictment

Factual Grounds:

*c. The following relevant facts relevant to **COUNTS 6, 8 and 9**, have been considered as PROVED:*

1. *On the 24th December 2004, at approximately between 20:00 and 20:30 at least 17 officers were tasked to attend at a property known as XXX, T, M. They had been instructed that the defendant was believed to be present in one of the apartments that made up the building. Because he was believed to be extremely violent, armed and dangerous with numerous international arrest warrants issued against him, the task of making the arrest was given to a specialist police unit. Before arriving at the scene, they were fully briefed and shown a photograph of the defendant's face in order that they could easily recognise him.*
2. *The defendant was in fact subject to an updated Interpol Wanted Notice that had been issued by the United Nations on 19 September 2003 and that indicated that he was subject to a number of arrest warrants for various serious charges including Preparing to Commit Acts of Terrorism, Kidnapping, Unlawful Detention, Extortion, and Serious Bodily Injury the country of issue for all of the warrants being Serbia and Montenegro.*
3. *At least 17 officers attended at the building and a number of them remained outside the property in order to guard against the defendant escaping.*
4. *At least 8 police officers ascended to the second floor using the stairs where they lined up in the corridor outside apartment number 10.*
5. *The apartment consisted of a corridor in front of the apartment, a living room/kitchen, a bathroom and three bedrooms.*
6. *The front officer was holding a ballistic shield in a so-called "snake formation". Although they were in plain civilian clothes, they were wearing flak jackets that had the word 'police' printed at least on the front.*

7. *The line of officers was prepared to open the door by force. However, when one of them tried the door handle, it was discovered that the door was unlocked and therefore they opened it.*
8. *As they just opened the unlocked door, and having shouted warnings that they were police and that the occupants should stop and raise up their hands, L J, without any lawful justification or legal defense, fired in the direction of at least 2 police officers, using a pistol type "T" caliber 7.62 x 25mm, serial number P…and at the very same moment the lights went off and he took refuge in the last bedroom of the apartment, from where he later shot 5 more times into the same direction as before. None of the shots fired against the police officers produced the death of any of them.*
9. *On the very same occasion with L J, there were also present inside the apartment V A, F S and L D, all seated around a table in the living room.*
10. *Almost simultaneously, Xh Sh, who was inside the middle room of the same apartment, fired an undetermined number of shots using an assault rifle 7.62 x 39mm.*
11. *Immediately an unidentified number of officers that were entering the living room at that moment, withdrawn into the corridor and came back inside again responding fire into the direction of the two rooms (middle and last room) from where the lights of gun shots were visible, despite the darkness of the living room.*
12. *In the course of the exchange of fire one of the officers, witness "E" was shot and suffered serious injury from fire shot from unidentified source, although coming from one of the two aforementioned rooms.*
13. *Immediately after witness "E" has shouted the he has been wounded, the Police Unit, while keep firing as described, withdrawn to the outside of the apartment rescuing the wounded police officer, who was conducted to the hospital for treatment and all remaining elements remained outside until reentering the apartment later on, when fire was stopped.*
14. *Witness 'E' was taken to hospital and found to be suffering from injuries by way of gunshot wounds to his thorax and to his hip. He required a three-month sick leave recuperation period during which he underwent a number of operations, examinations and interventions.*
15. *During the exchange of fire above described, at least were fired at least 6 shots by the pistol type T 7.62x25mm PA4934; 25 shots by the C Z M92*

assault rifle 7.62x39mm and 11 shots by the unidentified assault rifle 7.62x39mm and 6 grenades were launched without exploding.

16. *L D died on the spot due to fire of unidentified source resulting from the exchange of shootings as above described.*
17. *V A and F S surrendered to the police unit after the fired was ceased.*
18. *L J abandoned the premises, escaping through the balcony or room windows in undetermined circumstances, and was treated and interned in Pristina hospital, in Kosovo on the following day by 3:30am with injuries sustained by firearm in both thoracical and right crural/limb regions.*
19. *Xh Sh abandoned the premises escaping under the same undetermined circumstances to unknown place.*
20. *The assault rifle 7.62x39mm C Z was found unattended in the lawn at "E" in the vicinities of the aforementioned apartment in unknown circumstances, together with some traces of blood on the snow.*
21. *Aiming not to be caught and to escape, although in firing on the direction of at least two police officers, L J attempted to deprive them of their lives, so he was aware that death could occur as a prohibited consequence of his action and still he acceded to its occurrence.*
22. *He acted at a time when the police officers were executing their duty of protecting legal order, uncovering criminal offenses, apprehending perpetrator of a criminal offense, and keeping public order and peace.*
23. *Xh Sh together with L J have brought to the aforementioned premises at least an undetermined set of weapons, which at least included a pistol type "T" caliber 7.62 x 25mm, serial number P… with 1 live cartridge found in the chamber, 256 live cartridges contained in 15 packages, 8 magazines for assault rifles containing a total of 180 live cartridges, 54 live cartridges of type Winchester calibre .308, a grenade launcher MGL-6 serial number removed, an assault rifle C Z M92, caliber 7.62 x 39m, serial number 7…, and an unidentified assault rifle caliber 7.62 x 39mm and 6 grenades, to which are duly added the amount of ammunitions above proved as fired.*
24. *At the time that he used the pistol "T" and possessed the remaining weapons in co-perpetration with Xh Sh, L J did so without there being in force a valid weapon authorization card for them.*

25. *L J has been convicted on the 14 February 2007 by a judgment rendered by the District Court of Gjilan for 2 counts of kidnaping, 4 counts of unlawful detention of weapons and 3 counts of extortion for facts committed in September 2000. He was punished with the aggregated sentence of 6 years imprisonment.*

The following relevant facts, regarding ***COUNTS 6, 8 and 9****, have been considered as NOT PROVED:*

26. That L J jointly participated with Xh Sh on the shooting as proved above;
27. That L J fired towards more than two police officers before the light went off and before he took refuge inside the last room of the apartment.
28. That the remaining shots that L J fired with the T pistol from inside the last room of the apartment have been towards more than two police officers, and that he knew that there were more police officers inside the living room at the moment these shots were fired;
29. That L J has fired any shot of the assault rifle C Z M92, caliber 7.62 x 39m, serial number 7… or any other unidentified assault rifle caliber 7.62 x 39mm inside any of the rooms of the apartment;
30. That Xh Sh has been only on the middle room and that Xh Sh has not been also on the last room in a different moment, simultaneously or not with L J;
31. That L J has ever fired the grenade launcher MGL-6 serial number removed found in the crime scene, either on the middle room or in the last room;
32. That witness E has been targeted and shot by L J;
33. That L J's intention was also to kill as many police officers as possible.
34. That L J thought that the police officers were not police but a rival group instead.

Reasoning and findings:

As an initial note to the analysis of evidence, as gathered and produced before the main trial, some previous considerations must be provided. The

facts at stake date back to 2004 and the eleven years elapsed had necessarily produced a negative impact on the strength and effects of evidence gathered. Most of the documentary/technical evidence cannot be repeated even if needed and the effect of time impacts not only the accuracy of the factual description obtained from the witnesses but the proper existence of witnesses, some of those now reportedly deceased and therefore, regarding to which the respective statements cannot be obtained or re-obtained. On the other hand, although the number of witnesses stating upon the same facts cannot be deemed as low, the speedy nature of some of the relevant facts naturally led to elusive and partial descriptions of the same, taking into consideration the time already elapsed, as well as other factual elements that accompany their rapid time: the darkness of the place, the professional nature of the job performed by the witnesses as police officers till the present date, and the existence of a previous standard operational plan for standard situations as such. These important factors will be explained below as they decisively incorporated the whole account of the panel while evaluating and critically analyzing the evidence produced. The consistency of the evidence produced cannot be analyzed based only on a mere sum of details within the statements, but also by its *intra* and *inter* consistency, always filtered by common sense as well as by other parallel and apparently irrelevant proved facts. The numeration of the facts as listed above will be respected in the following panel's statement of grounds.

Facts 1, 2, 3, 4, 7 and 22: The Court was provided with 13 statements of police officers as anonymous witnesses that directly participated in the operation and all of them consistently described the plan, the place, the time, the target, the method, the number of officers involved, the respective tasks divided as securing the perimeter and building, as well as those in charge of entering the apartment and the fact that the door was unlocked as decisive on how the operational plan has been developed further on. Everyone described consistently the respective task although not precisely the respective order in the *snake formation*, which was considered as natural, having in mind the repetitive nature of their professional job and the time elapsed. The reason for the operation is well based on evidence provided by

the Interpol nominal search, wanted notice dated 19 September 2003 – Binder III, pg. 1-9.

Although all those witnesses were under anonymous status, the further confirmation of the following facts by witnesses V A and F S, as well as all documentary evidence produced as the result of the operation could not permit to conclude otherwise. Therefore, these witness's statements, although from anonymous source, are not alone to prove all these facts.

Fact 5: Regarding this fact it was sufficient the documentary evidence produced before the panel through the analysis of the Street, building and apartment plans – Binder III, pg. 1-9 absolutely consistent with all the pictures and sketches further taken of the crime scene, not contradicted by any other piece of evidence being it by any statement of any witness or by any other documentary evidence, as the Record of description of the crime scene – Binder III, pg. 10-21, the Record of found traces and items from the crime scene search and the photo album of the crime scene – Binder III, pg. 22-209 and the Photo album - Binder IV, pg. 1-11.

Fact 6: Witness J, affirmed himself as the commander of the storming operation and stated the details of the snake formation headed by another officer carrying a shield. He also described the characteristics of the shield in size and color and also the detail of the word POLICE stamped on the front. Finally, he was convincing when clearly stated that all officers were wearing plain civilian clothes upon which all used bullet proof vests with the word POLICE on both front and back. This statement is only partially confirmed by witnesses A, C, E, G – the one who carried the shield – R, I and Q, moreover never contradicted by anyone else. The witness V A stated that the two officers he saw when the door was open were dressing police uniforms. The formal contradiction of this late statement must be analyzed under the parameters initially explained involving the time elapsed since 2004, the stressful situation and the short time lapse given to the image V A got when he just looked at the door. The panel is plenty convinced that rather than simply lying, he got that impression of uniforms as taken from similar vests with the word POLICE stamped on the front as well as on the shield. Therefore, the

trial panel is convinced that his statement rather confirmed the entire veracity of the statements of all the aforementioned anonymous witnesses.

Facts 8, 10, 11, 29, 30 and 31: these facts were considered all together as the critical ones for the final assessment of the panel upon evidence produced. Indeed, the panel detected how different witness statements did reflect the difficulties on defining a clear picture of the incident that, at the end of the day, it was not made possible beyond a certain level. Reasons are of heterogeneous nature, as its dynamics in particular, the time elapsed, the different perception of reality by different witnesses already formatted to a pre-defined plan and to standard procedural operations in storming actions but under a stressful situation of being under fire. Having in mind all statements produced, the panel analyzed them all together and reached a factual version that it was considered as being the only one compatible with the evidence produced as a whole. It is worthy to be noted that evidence will not be stronger just being a sum of similar statements, thus turning them necessarily more credible than others produced in a lower number. Critical overviews upon evidence produced, filtered by the necessary common-sense, might somehow and sometimes, invert these quantitative primary conclusions.

Regarding the disputed fact whether the main door was unlocked or not, the panel had witnesses R, J and Q affirming the fact on the one hand, and V A, F S and L J denying it, on the other. The panel however was enlightened by witnesses R, J an Q stating that specific storming procedures exist for both locked and unlocked doors and witnesses R and Q only would storm the door if needed because that was their particular job along the snake formation, as well as being witness J in charge as the commander of this operation. All of them stated quite specifically that they had not to storm the door in this particular situation. Moreover, the final location of L D's dead body, almost 4 meters separated from the door, as stated by witnesses A and J, definitely discredits the statement of V A, F S and L J regarding this specific fact.

In what regards to, "*Police! Stop! Hands up!*" warnings that were shouted, the panel had no doubts having into consideration that all 13 police officers as

anonymous witnesses, as well as V A and F S, confirmed it clearly. Furthermore, the standard procedures of an official police unit trained for these specific purposes could not permit to conclude otherwise.

Being L J the person who was sitting together around a table with L D, V A and F S in the living room of the identified apartment, as well as he was the person who grabbed a pistol and shot against the elements of the police unit visible at the time it was confirmed by witness E who recognized L J from the picture of him previously presented during the briefing, by V A who confirmed that L J had a pistol on the table and by L J that never denied these facts, having the trial panel also into consideration the DNA confirmation and identification of the blood traces left behind inside the apartment and the ones collected in hospital of Pristina identifying L J as present in T in the critical night, as per Expertise 1207/2004 of traces of firearms and blood traces - Binder III, pg. 276-283, the Report concerning the taking of DNA sample of L J – Binder V, pg. 128-137; and Expertise 1178/04 of firearms, traces of firearms and traces of biological origin – Binder III, pg. 220-246.

Regarding the dynamics of the shooting (fact 11), huge doubts aroused and the statements of 10 anonymous witnesses were not sufficient to establish how many police officers were visible at sight at the precise moment L J shot using the pistol before taking refuge inside the last room and before the lights went off. According to V A there were only two, one of them behind the shield while hanging it. Witnesses R and J also mention two of them, however all others were not clear affirming that more than two were inside before the lights went off. Only witness E is quite sure that he was inside the living room, clearly describing the defendant's reaction in a detailed manner. The anonymous witnesses examined before the panel mainly confirmed to have entered the living room but only in a later moment when they returned fire, in particular against fire coming from 2 bed rooms, the middle one and the last one. Police officers were quite clear affirming that as an immediate reaction L J fired a pistol and took refuge inside the last room while the lights went off. In an ordinary situation, as well as according to the initial operational plan, the entire snake would have entered the living room and would have surrendered L J lacking any reaction of the late. However, his sudden reply obliged to an immediate retreat of the police unit outside of the apartment,

as stated by witnesses A, B and C, where part of the snake was still placed and, some instants later, an immediate reentering while exchanging intensive fire. Other version would not be sustainable within the short time frame as described and facing an immediate reaction by L J. In particular, it would not be possible to have 8 to 10 police officers already inside the room before L J started to shoot and got inside the last bed room. Had the returned fire be concomitant with the initial retreating movement of L J and he wouldn't have sufficient time and space to take refuge inside the bed room. Having into consideration both statements of witness E and V A, the panel concluded that there was no sufficient evidence to sustain the level of "*beyond any reasonable doubt*" that more than two police officers were at sight when L J fired the pistol he grabbed, before entering the last bed room and the lights went off.

The second doubtful fact was brought by the shooting fired from the middle bedroom, allegedly by Xh Sh who, according to V A, F S and L J (as also specifically referred in the indictment) was present in the apartment since the day before, has arrived together with L J. The panel assessed as truthful this fact having in mind the statements of witnesses A, B, C and J connected with the bullet cases collected from the crime scene clearly indicating fire shot by one assault rifle and a RPG from the middle bedroom and an assault rifle, a pistol and the same RPG, coming from the last bedroom. Concomitant fire coming both bedrooms as stated by witnesses B and C permit to conclude that two different individuals have shot; furthermore, having in mind the specific places from where RPG cases were collected from the crime scene, it clearly indicates that the same RPG was triggered from both the middle and the last bedrooms. This specific fact necessarily indicates that the RPG was moved from one room to the other and therefore it raises another relevant pair of doubts: who shot the RPG in each of the rooms? And whether or not Xh Sh has been also inside the last bedroom and shooting from there and in which moment it might have happened? This necessarily also turns into doubtful who shot the C Z assault rifle from the last room, leaving behind the respective bullet cases as collected later in the crime scene. Having in mind that the doors of both bedrooms are contiguous as it can be seen by the apartment plan, and that no witness mentioned any human movement

between the rooms, being the lights off, it is not possible to definitely conclude the opposite. Therefore, only the shootings fired by the pistol T in accordance with the 6 cases later collected can be surely attributed to L J, who previously handed that pistol before entering the last room. Furthermore, the previous statement of L J admitting to have possibly fired the C Z assault rifle is different from admitting to have done it; moreover is an isolated statement that is not admissible as sole evidence against him (article 123, paragraph 5 KCPC).

This also turned unclear the concrete circumstances in which Xh Sh and L J left the apartment, in which moment, by where, in particular, whether or not L J was the individual that witness J referred to in its statement when shooting and jumping out of the balcony, or was rather Xh Sh. None of the witnesses could recognize L J while escaping and even less Xh Sh, or to describe in more details this specific fact. Hence, there is no evidence at all of who left the C Z assault rifle outside the apartment.

Facts 12, 13 and 14: All witnesses stated in a consistent manner regarding the circumstances of witness E being wounded by fire coming from one of the bedrooms and the circumstances that followed regarding his evacuation to the hospital, being the witness E quite clear on that as direct victim, and confirmed by the statements of witnesses L and R who directly helped him, as well as the medical notes on Binder II, pg. 55-66.

Fact 15: Regarding this fact the panel relied on technical evidence as resulted from the collection of objects apprehended in the crime scene and further expertise performed upon them, namely, the Report on analysis of powder foils and determining the blood type - Binder III, pg. 266-268; Expertise 1207/2004 of traces of firearms - Binder III, pg. 276-283; Report on examination of firearms – Binder III, pg. 210-215; Analyses of firearms and firearms discharging evidence – Binder III, pg. 216-219; Expertise 1178/04 of firearms, traces of firearms and traces of biological origin – Binder III, pg. 220-246; Report on analyses of firearms traces – Binder III, pg. 247-252; Forensics report on analysis of firearms traces - Binder III, pg. 253-261; Verification on temporary seized items - Binder III, pg. 269-274; Judicial official Note 1126/2014 about

attending the crime scene - Binder III, pg. 262-265; and Expertise 1207/2004 of traces of firearms and blood traces - Binder III, pg. 276-283.

Facts 9, 16 and 17: These facts were plenty confirmed by the named persons themselves, V A and F S and the defendant L J, in conformity with the Official Note 1126/2014 about attending the crime scene in Binder III, pg. 262-265, and regarding the presence and death of L D, his Autopsy report in Binder III, pg. 284-304 and the photo album in Binder IV, pg. 1-11 which, all together, plenty confirms the statement of witness E and of all those who confirmed the later surrender of the survivors.

Facts 18 and 19: Given the fact that no statements are clear on HOW and WHEN L J abandoned the apartment as well as Xh Sh, the only positive description was provided by witness J referring to an unidentified individual leaving the last bedroom, shooting an assault rifle and escaping through the balcony, while the living room was on darkness. Under the strong possibility of both having been inside the last bedroom, together or one at the time, given the RPG cases found in both Bedrooms, no other conclusion of certainty can be extracted from the mentioned statement. It is worthy to be mentioned that although described in the indictment, no evidence at all was produced regarding Xh Sh, reportedly dead at the present date. Regarding the attendance of L J at the hospital in Pristina as detailed, the panel considered as relevant the Report concerning the taking of DNA sample of L J – Binder V, pg. 128-137; the Handover and summary of L J's medical file - Binder IV, pg. 12-15; the Content of L J's medical file - Binder IV, pg. 16-101 and the Hospital discharge sheet with epicrisis - Binder IV, pg. 102-109.

Fact 20: Together with the inconclusive statement of witness B, the trial panel relied on the crime scene description attesting the finding of the C Z assault rifle outside the apartment on the snow, as well through pictures taken, Binder III, pg. 77-78.

Facts 21, 27, 28 and 33: The whole description of the facts as made up by all anonymous witnesses, together with the statement provided by L J during the main trial, allowed the trial panel to assess, regarding the *mens rea* issue, in particular that that the shots fired by L J aimed essentially to permit his escape, however not preventing the intention to kill as the most likely effect

resulting from shooting into the direction of two police officers for 6 times at least. It was not sufficient to conclude however that he aimed to kill as much police officers as possible, as results from the indictment. There was no evidence produced to ascertain beyond any reasonable doubt that, while shooting from inside the last bedroom, L J was aware that more than 2 police officers were on sight facing its later shooting, more than the same 2 he was aware of, before taking refuge inside the bedroom and the lights went off.

Facts 23 and 24: These facts were admitted by L J who described how these weapons were taken to the apartment on the previous day by him and Xh Sh, plenty confirmed by the students V A and F S before the trial panel which is consistent with the pictures taken by both L K and Xh Sh with V A and F S as part of the case file, Photo albums in Binder IV, pg. 1-11, together with the expertise hold on weaponry collected from the crime scene as referred before.

Fact 25: The trial panel considered as valid evidence the criminal record of L J as obtained attesting the conviction dated 14 February 2007 as in Binder X, pg. 74. No other verdict (from T Court in Binder V, pg. 1 to 9 or any other as referred to in Interpol summary, Binder III, pg. 1 to 9) were considered as relevant, as these late respect exclusively to convictions *in absentia* not recognized as such by Kosovo law as previous valid convictions.

Fact 26: Having into consideration the statements of all anonymous witnesses as provided before the trial panel there is no single evidence that, apart to the fact of concomitant fire from two different Bedrooms – which implies a participation in the shooting of both L J and Xh Sh – there is no evidence however that it resulted from a joint decision, in a complementary action or based on a previous planned action articulated between the two. The trial panel assessed the actions committed by L J as a result of his individual options taken from the moment he initiated the shooting and took refuge in the last Bedroom. Any concomitant shooting from Xh Sh cannot be attributed to L J, neither in actions, nor in plan or outcome as a co-perpetration, or factually, as a joint participation.

Fact 32: Although two of the anonymous witnesses including witness J pointed out that witness E was wounded by fire coming from one of the Bedrooms, the expertise proceeded in 2004 was not able to determine from which weapon the wound was originated. Eleven years passed by, a new expertise was considered as hardly repeatable as well as basically irrelevant in face of the elements of the criminal offenses at stake.

Fact 34: Regarding the mistake alleged by L J that he thought it was not the police who stormed the apartment but the group of A K instead, it was considered as totally unreasonable and therefore untruthful, incapable to raise any serious and/or credible doubts in the trial panel. Indeed, the police officers have properly respected all the procedures and standards for an operation as such; they were using operational vests and shields with the word police stamped on them; L J was searched by Interpol due to pending arrest warrants giving him a reason to abscond from police; a normal observer herein represented by both V A and F S immediately apprehended the group as police officers, without any doubt; and finally, in no moment of the shooting L J intended to establish an expectable and clarifying oral conversation from within the Bedroom to where he absconded. Instead, he simply fired and escaped to Kosovo.

Legal grounds

For strict analytical purposes, and as it has been done before, the following legal grounds will be separated into two set of relevant factual situations: The Skopje situation (counts 1, 2 4 and 5) and the Tetovo situation (counts 6, 8 and 9).

The S situation: Counts 1, 2, 4 and 5

As brought to main trial, the defendant L J was charged with count 1, Attempt to commit aggravated murder in co-perpetration (articles 147, § 4, 5 and 10, 20 and 23 CCK 2003), count 2, Grievous bodily harm in co-perpetration (articles 154, § 1 and 2, and 23 CCK 2003); count 4, Attacking official persons performing official duties in co-perpetration (articles 317, § 1

and 3, and 23 CCK 2003); and Unauthorized ownership, control, possession or use of weapons in co-perpetration (articles 328, § 1 and 2, and 23 CCK 2003). All these criminal offenses as such, demand both objective and subjective several elements for a consequent judgment of conviction. Without any of them, the verdict will be necessarily of acquittal. One of these elements is the necessary connection between the objective elements in their entirety on the one hand, and the accused, on the other (the so-called subjective link). In other words, it is necessary to be proved that all the objective facts given as proved can be attributed to the accused in a certain legal manner.

In spite of the legal qualification that might be assigned to the shooting of 3 police officers in Skopje as described in the indictment, in the exact same circumstances of place and time, whether it is a co-perpetrated crime or not, whether it is an attempt or rather plenty executed on its typified result, whether these legal qualifications in separate counts should be cumulated or rather they should be consumed amongst them, these become all useless legal issues if the Prosecution could not establish a proved connection between these facts and the accused, through reliable and decisive evidence.

In the case at stake, and therefore, for counts 1, 2 4 and 5, the trial panel concluded that none of the detailed facts as described in the indictment could be attributed to the accused or to any other identified individuals as their perpetrator or co-perpetrator in a necessary level of beyond any reasonable doubt for the reasons above explained. Therefore, the verdict of acquittal regarding these 4 aforementioned counts is hereby the necessary legal conclusion, without any further legal considerations needed.

The Tetovo situation: Counts 6, 8 and 9

For analytical purposes, and having in mind the facts found as proved and as detailed above, the Tetovo situation will demand a separate approach to each of the counts involved. Hence, they will be considered one by one, in proper sequence as follows.

A) Count 6 - Attempt to commit aggravated murder in co-perpetration (articles 147, § 4, 5 and 10, 20 and 23 CCK 2003)

Article 147 of CCK (2003) reads,

"*A punishment of imprisonment of at least ten years or of long-term imprisonment shall be imposed to any person who:*

(…)

4) Deprives another person of his or her life and in doing so intentionally endangers the life of one or more persons;

5) Deprives another person of his or her life while acting ruthlessly and violently;

(…)

10) Deprives another person of his or her life at the time when such person is executing his or her duty of protecting legal order… apprehending a perpetrator of a criminal offense… or keeping public order and peace;

11) Intentionally commits two or more murders…"

As results from the above quoted article, the basic elements of this aggravated criminal offense are:

a) human death as the criminal result;

b) caused by a certain action (causal link, as per article 14 CCK); and

c) under the circumstances foreseen by one or more out of the 12 paragraphs of 147 CCK 2003.

Furthermore, other elements are also necessary, as added by general provisions:

d) criminal liability (action b) above attributed to a person intentionally or negligently (article 11, paragraph 1 CCK 2003);

e) in an adequate materiality to complete the legal result, consummate (death) or at least a proper attempt (article 20, paragraph 1 CCK 2003);

f) committing the action b) above, alone or jointly participating in the same action (article 23 CCK 2003), or in a lower level, assisting or inciting someone to commit the criminal action (articles 24 and 25 CCK 2003).

g) Inexistence of any cause excluding criminal liability (one of articles 7 to 10, 11. 2 or 3, 12.1, 18 and 19 CCK 2003).

Having into consideration all the elements as listed above and the proved facts, some legal considerations, leading to the necessary conclusions, are following now:

1. <u>The death and the attempt to deprive someone of his or her life and its causal link</u>

Although article 147 CCK 2003 mentions the deprivation of someone else´s life as the ordinary outcome of the criminal action, the attempt to do it is criminally punished as well.

As per article 20, an intentional and immediate action toward the commission of an offense, even when the action is not completed or the elements of the intended offense are not fulfilled, is also a manner to commit the offense.

Therefore, death, as such, is not a necessary outcome or an essential element of the crime at stake.

It has been proved that the accused L J fired into the direction of at least 2 police officers, using a pistol type "T" caliber 7.62 x 25mm, serial number PA … and at the very same moment the lights went off and he took refuge in the last bedroom of the apartment, from where he later shot 5 more times into the same direction as before.

It has also been proved that L J intentionally shot into the direction of the two police officers, so he was aware that death could occur as a prohibited consequence of his action and still he acceded to its occurrence.

Therefore, L J attempted to deprive at least two police officers of their respective life, so producing the aforementioned fire shots, he intentionally performed an action adequate to produce the result death, which did not occur due to circumstances independent of his will and out of his control.

2. The aggravated circumstances

Amongst other listed circumstances, a murder is aggravated when one:
4) Deprives another person of his or her life and in doing so intentionally endangers the life of one or more persons;
5) Deprives another person of his or her life while acting ruthlessly and violently;
(…)
10) Deprives another person of his or her life at the time when such person is executing his or her duty of protecting legal order… apprehending a perpetrator of a criminal offense… or keeping public order and peace;
11) Intentionally commits two or more murders…"

Comparing number 4 and 11, apparently both seem to apply to the present case in which it has been proved that the accused fired against at least two police officers attempting to deprive them of their respective life. However, they cannot apply concomitantly. In the case at stake the difference stands on the intention which, at it has been proved, was directed to deprivation of life of more than one, rather than the intention to simply endanger other´s life. Therefore, the trial panel decided to requalify the original paragraph 4 of the charge as it is in the indictment, and to apply paragraph 11 to the case at stake instead.

Furthermore, having into consideration the facts as they have been proved, the trial panel assesses the facts as not integrating the circumstance of paragraph 5. Indeed, firing 6 shoots against two police officers is a violent and a ruthless behavior but not in such a disproportionate manner much beyond the violent and ruthless nature of any other fatal weapon used in an ordinary way. Different would be the situation in which the entire shooting (and the use of the RPG) could be attributed to the accused, which has not been proved. Therefore, the trial panel decided that paragraph 5 is not applicable to the case at stake.

Finally, the trial panel considered as plenty applicable paragraph 10 as another aggravating circumstance as it has been proved that the accused

acted at a time when the police officers were executing their duty of protecting legal order, uncovering criminal offenses, apprehending perpetrator of a criminal offense, and keeping public order and peace.

3. The criminal specific intent

As per article 15 CCK 2003, the intent can be either direct or eventual.

The intent (*mens rea*) as a pure subjective element can only be extracted from the complete set of objective facts as a whole, tempered by the common sense and common knowledge of human nature.

The panel realized that the main intent of the accused was to escape/ not to be caught; but he also plenty represented that death of the police officers he fired against could occur from the shooting and he plenty acceded to its occurrence. In deed, taking refuge inside a bedroom first, and escaping from the apartment later, but firing against police officers, is a whole action that necessarily involves a serious and conscious risk of depriving his targets from their life, as an adequate action to directly cause death. Furthermore, as it has been proved, L J shot against at least two police officers before taking refuge inside the bedroom and the lights went off. This means that he could only build his intent upon two victims. Any further shooting from the bedroom, being the lights off, could not increase the number of represented victims in a bigger number than the one he initially represented when he started to shoot. One could argue that he could predict that more police officers were present at the scene later on which could be qualified as a negligent behaviour. However attempt and negligence are not compatible at all.

Regarding the legal qualification of the intent, the sort of this one is not the most intense (which would directly aimed to kill these victims in particular) but it is not the less intense as well (eventually killing the victims if together with the escape and repeal the police). This medium level intent (usually called *necessary dolus*) is not foreseen by the CCK 2003. However, the correct intensity of this *dolus*, although not denying its existence as a real intent, is to be considered by the trial panel while sentencing.

4. The lack of joint participation (co-perpetration)

Article 23 defines co-perpetration as the JOINT PARTICIPATION of more than one person in the commission of a criminal offense.

The difference between participation and joint participation stands precisely on the intent which is always the limit of individual liability (article 27, paragraph 1 CCK 2003).

Jointly participating implies a necessary joint intent, being it through a previous common plan, or at least by a tacit later adherence to that plan. Two people, even if acting similarly and concomitantly, aiming the same for each one of them, does not constitute a joint action.

In the case at stake it has been proved that L J reacted instantly to the action of the police entering the apartment, shooting against them. In no moment it has been proved that Xh Sh, at that precise moment inside the middle bed room, has previously agreed with the accused to help him or to act within common purposes to escape both from the apartment or to kill police officers at sight. It was not proved as well that both have escaped from the apartment at the same time, throughout the same place. Hence, the trial panel assessed the current facts as not sufficiently integrating a common and joint intent that could turn L J liable for the shooting as a whole, included the one fired by Xh Sh, the precise way it was produced. Therefore, the trial panel considered as not proved a proper joint action in order to be configured the legal concept of co-perpetration.

5. The lack of necessary defence and the lack of mistake of fact

As per article 8 CCK 2003, necessary defence implies to act averting an unlawful, real and imminent attack. The attack as idealized and put in action by the police unit, the precise manner it has been considered as proved, was everything but unlawful, given the legal purposes that have been proved as well. This reason is sufficient to put away any possible necessary defence, being inexistent one of its basic requirements.

The so-called *mistake of fact* as foreseen by article 18, paragraph 1 CCK 2003, implies that the perpetrator is unaware of a characteristic of that act or mistakenly believed that circumstances existed that would have rendered the act permissible.

The line of defence as presented by L J was based on a declared wrongful perception and self-conviction that the police unit was rather A K´s group, a rival group that allegedly would intend to kill him. That would eventually constitute a mistake of fact, being that fact a whole situation of necessary defence. As already explained, this line of argumentation was considered as totally unreasonable and therefore untruthful, incapable to raise any serious and/or credible doubts in the trial panel. Indeed, the police officers have respected all the procedures and standards for an operation as such; they were using operational vests and shields with the word police stamped on them; L J was searched by Interpol due to pending arrest warrants giving him a reason to abscond from police; a normal observer herein represented by both V A and F S immediately apprehended the group as police officers, without any doubt; and finally, in no moment of the shooting L J intended to establish an expectable and clarifying oral conversation from within the bedroom to where he absconded. Instead, he simply fired and escaped to Kosovo.

In conclusion, L J fulfilled all legal requirements and therefore he committed the criminal offense of aggravated murder as contrary to article 147, paragraphs 10 and 11 CCK 2003.

6. Aggravated murder as per the new CCK 2013 (Law 04/L-082)

Count 6, qualified as an aggravated murder in the indictment, must be still filtered by what article 2, paragraph 2 CCK 2003 imposes, later on reproduced by article 3, paragraph 2 of the new CCK 2013: *the most favorable law must be applied*.

Comparing both codes, not only the punishment is exactly the same but also the aggravating circumstances at stake are the same as well: where they

were paragraphs 10 and 11 of article 147 CCK 2003, are now respectively 1.9 and 1.11 of article 179 CCK 2013. From what to the provision and to the abstract punishment is concerned the new code is not more favorable at all than the older one.

B) Count 8 - Attacking official persons performing official duties in co-perpetration (articles 317, § 1 and 3, and 23 CCK 2003)

Given the intent directly aimed to murder as it has been proved - rather than to attack official persons - on the one hand; and the aggravated circumstance as foreseen in paragraph 10 of article 147 CCK 2003 of "*depriving another person of his life when such person is executing his official duty of protecting legal order, apprehending a perpetrator of a criminal offense… or keeping order and peace*", on the other, "*official person while executing his official duty*" is already a material circumstance once taken into consideration upon the same facts, the same circumstance cannot be considered in double, because in the case at stake, the attack is the necessary and adequate manner to produce the legal result (deprivation of life). Therefore, the only conclusion possible is that the count 8 is to be absolutely consumed by count 6 and cannot be otherwise autonomously considered and punished, without any other considerations here deemed as necessary.

C) Count 9 - Unauthorized ownership, control, possession or use of weapons in co-perpetration (articles 328, § 1 and 2, and 23 CCK 2003)

L J is both charged of 1/use and 2/control, possession or use of weapons, as per both paragraphs 1 and 2 of article 328 CCK 2003, in co-perpetration with another individual.

It has been proved that L J together with *Xh Sh have brought to the apartment in Tetovo at least an undetermined set of weapons, which at least included a pistol type "T" caliber 7.62 x 25mm, serial number P..., with 1 live cartridge found in the chamber, 256 live cartridges contained in 15 packages, 8 magazines for assault rifles containing a total of 180 live cartridges, 54 live cartridges of type W calibre .308, a grenade launcher MGL-*

6 serial number removed, an assault rifle C Z M92, caliber 7.62 x 39m, serial number 7685, and an unidentified assault rifle caliber 7.62 x 39mm and 6 grenades, to which are duly added the amount of ammunitions above proved as fired.

Furthermore it has been proved that at the time that he used the pistol "T" and possessed the remaining weapons L J did so without there being in force a valid weapon authorization card for them.

Summarily, L J used the pistol type T with identification as above while firing against the at least two police officers This fully typifies the description of article 328, paragraph 1 CCK 2003; furthermore he possessed and controlled the aforementioned list of weapons while bringing all them to the apartment together with Xh Sh, without being duly authorized to do so, in which list it is also included the unauthorized possession and control of the used pistol type T. Doing so, his action also fully typifies paragraph 2 of the same article of CCK 2003.

The trial panel is plenty aware of how disputed the legal qualification is on whether aggravated murder consumes or not the criminal offense of use of the particular weapon necessary to carry out the said aggravated murder.

On the one hand, the protected value at stake is different since Murder protects human life and the unauthorized use of weapon protects the public order; on the other hand, the law maker when criminalizing the unauthorized use of weapons deemed it as nothing but a way to anticipate the real protection of criminal results - those that, at the end of the day, are supposed to be prevented. In other words, sometimes the criminalization of certain actions is worthy for the simple purpose of protecting further harmful results despite of these not being included as elements of the criminal offense itself. In case at stake, criminalizing the unauthorized use of weapons would be basically to protect the harmful result that those weapons are able to produce when used. Having this, when the aimed result was effectively harmed (attempt aggravated murder), the use of an instrument concretely

taken to produce such result would be consumed by the core criminal offense, in case the attempt murder.

The trial panel opted for this last.

Nevertheless, it always remains the unauthorized criminal offense of possession and control regarding the complete list of weapons above identified, in which is included the pistol type T.

In line with article 2, paragraph 1 of Law 04/L-209 on Amnesty dated 11 July 2013, All perpetrators of offenses listed in Article 3 of this Law that were committed before 20 June 2013 shall be granted a complete exemption from criminal prosecution or from the execution of punishment for such offenses, in accordance with the terms and conditions of the same article.

The criminal offense of unauthorized possession and control of weapons is listed amongst those who are subject to the present amnesty as per article 3.1.2.5 of that law. Being not proved any criminal offense "*that resulted in grievous bodily injury or death*", as per article 4.1.3, not even the proved use of the pistol type T, would be an exception from the said amnesty and therefore there is no exception in this case.

The only disputed issue regarding the effective application of the said amnesty to the criminal offense at stake would be article 1 of the same law: it is explicitly said that it applies to "*prosecution for such criminal offences committed prior to June 20, 2013 WITHIN the territory which now constitutes the Republic of Kosovo*".

The case in hands was committed OUT of the territory which now constitutes the Republic of Kosovo, namely in XXX, Tetovo, Macedonia.

Aware of it, the panel found that being a requisite for prosecution "*the act being ALSO punishable at the place of its commission*", however the applicable law (in its entirety) is the Kosovo one only (article 101, paragraphs 1 and 2 CCK 2013 and article 115, paragraph 3 CCK 2012).

Although Kosovo cannot determine an amnesty upon acts committed in other states, due to lack of sovereignty upon such states, the action of prosecuting in Kosovo a criminal act committed outside Kosovo by a Kosovo citizen when in a similar case committed inside Kosovo the prosecution of the same act would be necessarily halted by amnesty (without being a criminal offense prosecutable in Kosovo as the first requisite), then it would constitute the opposite violation of sovereignty: Kosovo would be accepting the value attributed to acts as being of criminal nature or not by another state in detriment of Kosovo´s own value.

Therefore, the trial panel concluded that despite an amnesty cannot be declared upon acts committed outside Kosovo due to reasons of mutual state sovereignty, it must be however extended to any prosecution in Kosovo upon similar facts because, first of all the criminal offense at stake must be a crime inside Kosovo. The criteria of censorship that a criminal offense must be punishable ALSO at the place it was committed establishes the primary possibility of prosecuting and punishing an act in Kosovo, especially because it cannot stand in exclusive accordance with foreigner states´ criteria. In such matters, Kosovo criteria must prevail.

SENTENCING

As per article 3.2 of the new CCK, as well as per article 2, paragraph 2 of the former KCC, the most favourable law shall be applied, which implies, as a principle, both the calculation of punishments and a detailed analysis of the global abstract regimes.

According to article 34.1 and 2 of the former CCK, punishments to be imposed present three different and cumulative purposes: to prevent the perpetrator from committing criminal offenses in the future, to rehabilitate him and to deter other persons from committing criminal offenses. Article 41 of the new CCK introduces two new purposes to be considered in general, together with the herein mentioned ones.

Regarding the calculation of punishments, article 64.1 of the former CCK established the criteria to be considered, the limits and the aggravating and mitigating circumstances. Article 73 of the new CCK does not establish a different system and also mitigation and aggravating circumstances must be taken into consideration in the same manner.

Article 71 of the former CCK and article 80 of the new CCK establish the same criteria on sentencing.

It must be said that none of the defined regimes can be considered summarily and abstractly as more favourable or unfavourable to the sentenced person, considering only the abstract frames of punishment. Therefore, this conclusive operation shall be performed upon the concrete circumstances involved. Hence,

For aggravated murder, article 147 of CCK (2003) reads,
"*A punishment of imprisonment of at least ten years or of long-term imprisonment shall be imposed to any person who:*
(…)
10) Deprives another person of his or her life at the time when such person is executing his or her duty of protecting legal order… apprehending a perpetrator of a criminal offense… or keeping public order and peace;
11) Intentionally commits two or more murders…"

Article 179 CCK (2012) establishes precisely the same frame of punishment as well as the same aggravating circumstances at stake – paragraph 1.9 referring to deprivation an official person of his or her life when such person is executing his or her official or related duties; and paragraph 1.11 referring to intentional commission of two or more murders.

In abstract terms there is no relevant difference between the two regimes of punishment as prescribed. Nevertheless, the whole regime must be considered.

Regarding this particular issue, for the attempted form of committing the crime, there are substantial differences that necessarily impact the final outcome of the sentencing.

Indeed, as per Article 20 of CCK (2003), paragraph 3, "*A person who attempts to commit a criminal offense shall be punished more leniently than the perpetrator, in accordance with article 65, paragraph 2 of the present Code*"

Article 65, paragraph 2 of the aforementioned code, reads: "*The punishment imposed for attempt… shall be no more than three-quarters of the maximum punishment imposed prescribed for the criminal offense*". *Furthermore, Article 66, paragraph 1 establishes that "the court may impose a punishment below the limits provided for by law… when the law provided that the punishment of the perpetrator may be mitigated*".
In a joint interpretation of both articles 20 and 66, the possibility of mitigation of punishment turns into mandatory. Otherwise, the obligation to punish the perpetrator more leniently as directly established by article 20, paragraph 3 would be violated if not necessarily applied.

Applying the limits of mitigation as defined by article 67, paragraph 1.3 in conjunction with article 65, paragraph 2 CCK (2003), the mitigated frame of punishment would be, for the criminal offense of attempted murder at stake, from 1 year to 30 years of imprisonment.

The CCK (2012), foresees the punishment of any attempt in a more sever manner. Indeed, article 28, paragraph 3 reads: "*A person who attempts to commit a criminal offense shall be punished as if he or she committed the criminal offense, however, the punishment may be reduced*."

Comparing both regimes, the punishment MAY BE reduced in accordance with the new code, but it is mandatory to be mitigated in accordance with the old one.

On the other hand, even if mitigated in accordance with the new code, as per article 76, paragraph 1.1, for the criminal offense at stake the minimum term of imprisonment to be concretely imposed should not be below 5 years of imprisonment. According to the former Code (2003) the minimum term is much lower than this, as previously exposed.

In conclusion, the former Code CCK (2003) is necessarily more favorable than the new and shall be applied in the case at stake.

Article 64 CCK (2003), the herein applicable Code, establishes that the court shall take into consideration "*(…) the purpose of punishment, all the circumstances that are relevant for the mitigation or aggravation of the punishment and, in particular, the degree of criminal liability, the motives for committing the act, the intensity of danger or injury to the protected value, the circumstances in which the act was committed, the past conduct of the perpetrator, the entering of a guilty plea, the personal circumstances of the perpetrator and his behavior after committing a criminal offense. The punishment shall be proportionate to the gravity of the offense and the conduct and the circumstances of the offender.*"

On the one hand, the panel had in mind the medium degree of his criminal liability: the intent is not of the highest level reaching a typical *direct dolus* but overtakes however the *eventual* dolus, since deprivation of life was more than simply possible but strongly possible as a consequence; as well as the intensity of danger or injury to the protected value which is high as 6 shots fired into the direction of someone are of high danger by nature. Therefore, the panel assessed that the concrete punishment could not be lower than 5 years of imprisonment.

On the other hand, the gravity of the offense considering the unproved consequences as harmful injuries, then it must be considered as low; the reasons for committing the act are not legally acceptable, since not being caught by the police is not to be considered as a mitigating circumstance at all. Furthermore, the circumstances of the act revealed no premeditation but an immediate reaction instead. The time elapsed from the events also counts

in defendant's favor. Finally regarding the past conduct of the perpetrator, no other prior convictions were found and the only one, although referring to facts dated 2000, establish its nature legal censorship only in 2007 when the verdict was rendered. All other reported convictions were *in absentia* and those cannot be considered as valid in accordance with Kosovo law for all possible effects. Therefore, the panel assessed that the concrete punishment could not be higher than 7 years of imprisonment.

Having taken all those circumstances into consideration the Court found **6 (six) years of imprisonment** as the adequate punishment.

COMPENSATION CLAIMS

Due to the fact that victims are from a foreign state, most of them under protection of anonymity, having been part of the same facts subject to a prior trial in Tetovo, being the defendant in detention on remand and balancing the timings of a quick trial as demanded and the evidentiary acts still necessary to gather all facts related with possible compensation claims, the Trial panel decided to refer the victims to the proper civil instances in order to get effective compensation claims.

Considering all aforementioned grounds, it is as decided as in the enacting clause.

Legal remedy: This Judgment may be appealed by the Prosecution or by the convicted defendants before the Court of Appeals through the Basic Court of Prizren within 15 (fifteen) days of the day the full written judgment has been served to the parties, according to Articles 380, paragraph 1, 381, paragraph 1 and 388, paragraph 1, all of KCPC.

Gjilan/Gnjilane, 14th December 2015

Vitor Hugo Pardal	Muhamet Musliu
Presiding Judge	Court Recorder